IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8690 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAROTTAMDAS M SHARMA

Versus

OIL & NATURAL GAS COMMISSION

Appearance:

1. Special Civil Application No. 8690 of 1988

MS A.V.Amin for for Petitioner No. 1-6

MR TUSHAR MEHTA for Petitioner No. 7-9

MS KJ BRAHMBHATT for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 06/10/2004

ORAL JUDGEMENT

In this petition, the petitioners who were at the relevant time working as Technical Assistants in the

respondent No.1 Oil and Natural Commission (ONGC for short) have prayed that the posts of Technical Attendants be treated as Class III posts and accordingly, the petitioners be given the benefits of promotion policy formulated by the respondents.

2. It is the case of the petitioners that the post of Technical Attendant is a Class III post and that the respondents have always treated the same in Class III category. On the basis of this assertion, the petitioners' claim that Technical Attendants are required to be promoted as per the new promotion policy dated 11th December 1987 of the respondents.

3. It is not in dispute that as per the said promotion policy formulated by the respondents and circulated through circular dated 11.12.87, those class III employees of the ONGC who have not received any promotion for a period upward of 22 years should be granted the grade of next higher post.

4. In support of the contention that the post of Attendant is Class III post, the petitioners have produced a document dated 1.3.78 in which a list of employees (Class III) of Western Region who have completed 15 years and above as on 1.3.78 is to be found. In the said list, the counsel for the petitioners points out that Technical Attendants are to be found. The petitioners have also produced an Office Memorandum dated 13th March 1979 issued by the Deputy Director for Director for Personnel in which the post of Technical Attendant is shown in Class III non-technical, according to the counsel for the petitioner.

5. Appearing for the respondent Nos.1 & 2, learned advocate, Ms.Kalpana Brahmbhatt, has relied on the affidavit in reply filed by the ONGC and contended that the post of Technical Assistant was since 1965 placed in the category of Class IV posts. The respondents have produced at Annexure I with the affidavit in reply, an Office Memorandum dated 6th October, 1965 in which it is stated, inter alia, that as per the decision taken at the 62nd meeting of the Commission held on 7.8.65, the posts in the Commission have been redesignated and reclassified. Along with this Office Memorandum at Annexure I is a statement showing re-designation of posts in Class IV wherein the post of Ferro Boy/Technical bearer/helper is redesignated as Technical Attendant/Helper in Class IV category. Learned advocate for the respondent Nos.1 & 2 also points out from the affidavit in reply that pursuant to the representation

from the Unions against certain discrepancies and anomalies prevailing in the service of Class IV employees in the matter of promotion, a meeting was held between various Unions and the ONGC on 24th and 25th April 1986 and a decision was taken as a full and final settlement of the agenda items pertaining to promotions/anomalies/ disparities and pursuant to the said settlement, all Class IV employees with 22 years of service as on 1.1.86 were to be considered for appointment by selection to one step higher than the existing scale of class IV as personal upgradation of the employees.

6. Having considered the submissions made on behalf of the parties and having perused the material on record, it appears that the post of Technical Attendants was categorized by the ONGC in class IV category. The Office Memorandum dated 6th October 1965 and the statements made in the affidavit in reply sufficiently clear this aspect of the matter. Though there is some confusion, as can be seen from the document dated 1.3.78 and the OM dated 13th March, 1979 produced by the petitioners, it is not possible for me to hold that the post of Technical Attendants was a Class III post. To begin with, the document at page 24 of the petition, purported to be the list of employees in Class III of Western Region is an incomplete document and neither the source nor the author of the document is disclosed. OM dated 13th March, 1979 is also not conclusive of the categorization of the post of Technical Attendants and the fact that the post of Technical Attendants is clubbed with Class III (non-technical) in the said document further confuses the issue. This confusion notwithstanding, it is not possible for me to discard the statement made on oath by the respondents in the affidavit in reply dated 15th July 1989 which is accompanied by a detailed Office Memorandum dated 6th October 1965 by which the posts in the ONGC were redesignated and classified in which as noted above, the post of Technical Attendant is categorized as Class IV posts. In the result, therefore, I am unable to accept the contention of the petitioners that the post of Technical Attendant belonged to Class III category.

7. There is one more reason why the petitioners cannot be granted the relief as prayed for in the present petition. As noted earlier, several Unions of the ONGC and the ONGC management pursuant to a meeting dated 24th and 25th April 1986, mitigated the difficulties of the class IV employees by agreeing to grant them one step promotion after stagnation for 22 years. The petitioners have not denied that the petitioners have availed of the benefits under this policy. Having accepted the benefits

of one step promotion pursuant to the decision of the Management, after considering the representations of the Unions, it is now not open for the petitioners to turn around and contend that they should be granted yet another promotion with retrospective effect treating them as Class III employees. Having accepted the benefits of the promotion policy meant for Class IV employees, the petitioners have acquiesced in the situation obtainable therefrom and are now precluded from adjudicating the question of being granted promotion as if they belong to Class III posts.

8. In the result, the petition fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)